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OFFICE OF PETITIONS

In re Application of :
Surburg et al. :
Application No. 10/626,178 : DECISION GRANTING PETITION
Filed: 24 July, 2003 :
Attorney Docket No. :

This is a decision on the petition filed on 29 July, 2004, under 37 CFR 1.53(e)(2), requesting that the above-identified application be accorded a filing date of 24 July, 2003, with a complete specification as a part of the original disclosure of the application.

The petition is granted.

Papers purporting to be a division of parent application No. 09/988,860, were deposited on 24 July, 2003. The papers included a preliminary amendment, a declaration, and an application transmittal letter.

On 25 May, 2004, the Office of Initial Patent Examination (OIPE) mailed a "Notice of Incomplete Application" stating that the present application had not been accorded a filing date, as the papers received at the USPTO were missing a specification. The Notice indicated that the filing date would be the date of receipt of the missing items.

In response, the present petition was filed on 29 July, 2004. Petitioner asserts that a complete application was filed on 24 July, 2003. In support, petitioner has provided a copy of a postcard receipt bearing an Office-date stamp of 24 July, 2003, and the above-identified application number and itemizing, *inter alia*, an application for patent as well as a preliminary amendment and a declaration.

In view of the fact that an application consists of a specification, including the claims, and drawings, if any, and that no specification received on 24 July, 2003, is located in

the official file, the evidence is persuasive that a complete application (specification including claims, and drawings, if any) was received on 24 July, 2003. Therefore, the application will be accorded a filing date of 24 July, 2003.

Nevertheless, petitioners are reminded that the identifying data on a postcard receipt should be so complete as to clearly identify the item for which receipt is requested. The postcard should identify the type of paper being filed, and the number of pages being submitted. If a new application is being filed, all parts of the application being submitted should be separately listed on the postcard (e.g. the number of pages of specification (including written description, claims and abstract) number of claims, number of sheets of drawings, number of pages of oath/declaration. The postcard receipt will not serve as *prima facie* evidence of receipt of any item which is not adequately itemized on the postcard.¹

In addition to a properly itemized postcard, petitioners may avoid in the future the predicament which has occurred by including, in the application-as-filed, a statement that such specifically enumerated prior application or applications are "hereby incorporated herein by reference." The statement may appear in the specification or in the application transmittal letter. The inclusion of this incorporation by reference of the prior application(s) will permit petitioner to amend the continuing application to include any subject matter in such prior application(s), without the need for a petition.²

The petition fee of \$130.00 will be credited to counsel's deposit account, No. 16-0877.

The application will be processed and examined using the copy of the specification supplied with the present petition.

The application is being forwarded to Office of Initial Patent Examination for processing with a filing date of 24 July, 2003, using the specification, including the claims, supplied with the petition.

¹ MPEP 503.

² MPEP 201.06(c).

Telephone inquiries specific to this matter should be directed to the undersigned at (703) 308-6918.

A handwritten signature in black ink, appearing to read "D Wood", written in a cursive style.

Douglas I. Wood
Senior Petitions Attorney
Office of Petitions